

Before the
COPYRIGHT ROYALTY JUDGES
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In re

**DISTRIBUTION OF CABLE
ROYALTY FUNDS**

**CONSOLIDATED DOCKET NO.
14-CRB-0010-CD/SD
(2010-13)**

In re

**DISTRIBUTION OF SATELLITE
ROYALTY FUNDS**

**SETTLING DEVOTIONAL CLAIMANTS' MOTION TO QUASH DISCOVERY
REQUESTS OF MULTIGROUP CLAIMANTS**

The Settling Devotional Claimants (“SDC”) hereby move to quash the discovery requests served by Multigroup Claimants (“MGC”) on January 8, 2018, in connection with the 2010-2013 cable and satellite royalty distribution proceedings. MGC’s discovery requests are attached as Exhibit 1. The SDC’s objections are attached as Exhibit 2. Counsel for the SDC and MGC met and conferred by phone and email on January 22-23, 2018, but were only able to resolve issues not raised in this motion. The SDC move to quash pursuant to the Judges’ requirement that:

If the producing party has evidence that it wishes to withhold—for whatever reason—the producing party must file a motion to obtain relief from its discovery obligation, most often in the form of a motion to quash the discovery request in general or in some particular.

Order on IPG Motions for Modification, Distribution of 2004-2009 Cable Royalty Funds, etc., Docket No. 2012-6 CRB CD (2004-09) (Phase II) (Apr. 9, 2015).

A. MGC is not Entitled to Any Discovery in the Distribution Phase at All.

MGC filed a document entitled “Multigroup Claimants’ Written Direct Statement” in the distribution phase of these proceedings on December 29, 2017, the deadline set by the

Judges to file a distribution-phase written direct statement. As the SDC and the Motion Picture Association of America, Inc. (“MPAA”) explained in their Joint Motion to Strike Multigroup Claimants’ Purported Written Direct Statement and to Dismiss Multigroup Claimants from the Distribution Phase on January 9, 2018 (“Motion to Strike”), MGC’s document fails to comply with the Judges’ regulations and orders governing the submission of a written direct statement. The reasons MGC’s filing failed to constitute a written direct statement are set forth more fully in the briefing on the Motion to Strike, and the SDC hereby incorporate the arguments from the briefing on the Motion to Strike herein. More recently, MGC has admitted that “MC did not *expect* that the methodologies advocated by either the SDC or MPAA would render an allocation of 100% of either the devotional or program suppliers category to MC.” *MGC’s Opposition to (Second) Joint Motion to Strike MGC’s Written Direct Statement and to Dismiss MGC from the Distribution Phase*, Consolidated Docket No. 14-CRB-CD/SD (2010-2013), at 6 (emphasis in original). This is an admission that MGC’s claims for 100% of the funds in each category do not have “evidentiary support,” and that MGC explicitly did not believe that his claims “are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.” 17 C.F.R. § 350.6(e)(3). This is further confirmation that MGC’s filing was not a proper submission in these proceedings.

By submitting a filing explicitly not in compliance with the requirement of the Judges’ rules requiring claims to have evidentiary support, MGC is subject to automatic dismissal and can no longer participate in the distribution phase of these proceedings. *See, e.g., Order Granting SoundExchange Motion to Dismiss Muzak LLC*, Docket No. 2006-1 CRB DSTR (Jan. 10, 2007), at 1 (Ex. A). The failure to file a timely and proper written direct statement

precludes MGC from participating in discovery. *Order Granting in Part Allocation Phase Parties' Motion to Dismiss MGC and Denying MGC's Motion for Sanctions Against Allocatiaon Phase Parties*, at 3-4 (“a party that has, through procedural default, forfeited its right to continue participating in the applicable phase of the proceeding. ... MGC’s procedural default thus precludes MGC from, *inter alia*, participating in allocation phase discovery.”).

MGC’s attempt to end-run around the Judges’ prescribed procedures would allow him to access discovery and the entirety of opposing parties’ evidence and case prior to setting forth any reasoning or arguments of his own. MGC apparently would like to present his own variation on the methodologies propounded by the other parties, disguised as “adjustments” and developed with the benefit of reviewing all of the evidence and testimony already put forth by the other parties. MGC’s proposed sequencing of events would also allow MGC to avoid rebuttal testimony to be presented against his “adjusted” methodology, and avoid full-scale discovery into his methodology and case.

The Judges have already rejected attempts by MGC to delay presenting a case until after discovery, ruling that “[n]either the statute nor the CRB’s rules require that *any* discovery be conducted before written direct statements are filed in CRB distribution proceedings. CRB rules, and the Judges’ scheduling order in this proceeding, permit the parties to propound discovery requests following the filing of WDSs.” *Order Granting in Part MGC’s Expedited Motion to Continue Distribution Proceedings Following Resolution of Pending Motions*, at 4. MGC’s discovery requests now seek the production of discovery prior to MGC filing a compliant written direct statement.

The opportunity to present a direct statement allows a party to open the door to discovery (a door that goes both ways). MGC chose to keep the door closed, presenting no proposal for a methodology as a basis for distribution that the other parties could seek discovery on. He cannot now open the door one-way to request discovery of the other parties. All of MGC's document requests should be quashed.

B. MGC has Explicitly and Tacitly Accepted the Methodologies of the Other Parties, Rendering Discovery Unnecessary.

MGC's filing failed to set forth any methodology and openly "elected to accept the results of methodologies submitted by adverse parties in these proceedings, subject only to modification as to their accuracy and reasonableness, according to evidence obtained during the course of these proceedings." Testimony of Raul Galaz, Consolidated Docket No. 14-CRB-CD/SD (2010-2013), at 3. As the Judges have already found, MGC's filing constitutes acceptance of the SDC's and MPAA's methodologies. *See* E-mail from C.J. Suzanne Barnett (Jan. 12, 2018) ("Multigroup Claimants have chosen to proceed without proposing a unique distribution methodology, but rather to accept, subject to accuracy testing, the methodologies of the two remaining participants, MPAA-Represented Program Suppliers and Settling Devotional Claimants"). Accordingly, MGC's document production requests that relate to the selection or theoretical basis for the SDC's proposed methodology, rather than merely to testing the accuracy of computations, do not relate to any material issue genuinely in dispute, and are therefore irrelevant. This objection applies to MGC document request numbers 6-19, 31-33, 36, 40-43, 45, 47-48, and 59. It also applies to MGC document request numbers 61-71 to the extent these requests could be interpreted to seek anything other than the data and code files underlying the computations described by Dr. Erkan Erdem. Each of these requests should be quashed.

C. Request for Allocation Phase Discovery

MGC's first request is:

1) All documents produced by any party to the 2010-2013 cable royalty allocation proceedings, including but not limited to the Motion Picture Association of America, Settling Devotional Claimants, Joint Sports Claimants, Canadian Claimants Group, Commercial Television Claimants Group, and the Public Television Claimants.

Exhibit 1, at 3. The SDC specifically object to this request on the grounds that MGC was not entitled to receive any discovery in the Allocation Phase because he was not an Allocation Phase party and did not submit a written direct statement in the Allocation Phase. *Order Granting in Part Allocation Phase Parties' Motion to Dismiss MGC and Denying MGC's Motion for Sanctions Against Allocation Phase Parties*, at 3-4 ("The Allocation Phase Parties need not provide MGC with copies of materials responsive to discovery requests propounded in connection with WDS-As and WRS-As.").

In addition, this document request is not tailored to seek "underlying documents related to the written exhibits and testimony" that the SDC submitted in the Distribution Phase. *See* 37 C.F.R. § 351.6. Instead, MGC seeks documents underlying completely different exhibits and testimony from those submitted in the Distribution Phase. The Judges have previously ruled that discovery of underlying documents for exhibits or testimony that were presented previously by a different party need not be produced by a party whose witnesses did not consider them in preparing their written direct testimony. *Order Denying SDC's Motion to Compel IPG*, Docket No. 2008-02 CRB CD 2000-03 (Phase II) (Remand), Jan. 3, 2017. Similarly, MGC is not entitled, during the Distribution Phase proceedings, to discover documents underlying testimony in the Allocation Phase that the SDC's witnesses did not consider in their written direct statement in the Distribution Phase.

The SDC further note that other Allocation Phase parties have informed the SDC that they object to production of documents that they produced in the Allocation Phase, and that they may choose to seek to intervene in this discovery dispute to have their objections heard as well.

MGC's document request 1 should be quashed.

D. Agreements with Experts and Media Companies

MGC's second request is:

2) Any and all documents reflecting agreements entered into between the SDC, on the one hand, and either John Sanders, Dr. Erken Erdem, Toby Berlin, Cable Data Corporation, Tribune Media Services, or Nielsen Media Research, on the other hand.

Exhibit 1, at 3. MGC has agreed to narrow this request so as not to include agreements for the purchase of data from Cable Data Corporation, Tribune Media Services, and Nielsen Media Research, and to allow for redaction of certain commercially sensitive information from any agreements produced. MGC would not agree to exclude any agreements for prior testimony with Toby Berlin, whose testimony has been designated by the SDC.

The SDC have not submitted new testimony from Toby Berlin in this proceeding, they have only designated her testimony from a prior proceeding. A requirement to produce documents underlying testimony designated from a prior proceeding would be unwieldy, and would undermine the policy of permitting designation of testimony from prior proceedings. To the extent agreements with expert witnesses were germane to the credibility or potential bias of a witness in the prior proceedings, those agreements were subject to discovery in those prior proceedings and any cross-examination relying on such an agreement could have properly been raised by the actual parties to those prior proceedings. It would be unworkable to allow parties to collaterally attack the credibility of a witness from a prior proceeding when

that witness is not available to be cross-examined or respond to those collateral attacks the way that witnesses providing new testimony in these proceedings are. MGC's document request number 2 should be quashed as to any agreement except with a witness for testimony in this proceeding.

E. Requests Seeking Documents Relating to Withdrawn WDS

MGC's fourth and fifth requests are:

4) Any and all documents reflecting differences between the SDC's written direct statement filed on June 30, 2017 and the version filed on December 29, 2017.

5) Any and all documents on which any differences between the SDC's written direct statement filed on June 30, 2017 and the version filed on December 29, 2017, are based.

Exhibit 1, at 3. These requests are improper. Even if non-privileged responsive documents exist, they are not subject to discovery because the WDS filed on June 30, 2017, was deemed withdrawn by the Judges. The parties were freely permitted to re-file with any alterations at that time. *Order Granting in Part MGC's Expedited Motion to Continue Distribution Proceedings Following Resolution of Pending Motions*, at 4 ("The WDS-Ds that MPAA, the JSC, and the SDC previously filed are deemed withdrawn, and may be resubmitted by the new deadline in their present form, or with such modifications as those parties see fit.").

Because a party entitled to discovery would only be entitled to discovery of "nonprivileged underlying documents related to the written exhibits and testimony." 37 C.F.R. § 351.6. The filings from June 30, 2017, are not the "written exhibits and testimony" that were submitted in these distribution proceedings, and thus there is no right to discovery of underlying documents relating to those filings. Allowing MGC to seek discovery relating to the filing of June 30, 2017, would simply compound the unfair advantage that MGC has already received

by being able to review the SDC's testimony and methodology prior to ever presenting a case of his own.

Additionally, MGC's request for documents relating to changes made since June 30, 2017, would likely reach documents protected by the work product protection and attorney-client privilege, as it seeks documents relating to the drafting and revision of testimony prior to the final WDS being submitted on December 29, 2017. The SDC should not be required to produce any discovery relating to its withdrawn filing of June 30, 2017, and the scope of discovery should be limited only to documents underlying the operative WDS filed on the appropriate deadline of Dec. 29, 2017.

The situation presented here is not equivalent to the situation in the 2004-09 cable and 1999-2009 satellite distribution case, in which the SDC sought documents underlying IPG's initial written direct statement and both of its amended written direct statements. IPG's serial and improper filings contained multiple unexplained substantial changes in the proposed awards and the computations underlying those proposed awards, leaving the other parties completely at sea with regard to the reasons for those changes (other than to reach a preferred result). In contrast, the SDC's written direct statement includes some additional data and analysis from their written direct statement of June 30, 2017, but does not revise the proposed share or its computation. No basis has been shown for why MGC needs or should receive anything underlying the written direct statement of June 30, 2017, which was "deemed withdrawn."

F. Requests Seeking "Any and All Documents Relied on ..." Without Further Limitation or Clarification.

Finally, each of MGC's document request numbers 6 and 28 requests "any and all documents relied on" by Mr. Sanders or Dr. Erdem, without otherwise addressing the SDC to

any meaningful or identifiable limitation, topic, or set of documents. These requests are simply too broad and vague to allow the SDC to formulate a response or specific objection.

Request numbers 6 and 28 should be quashed.

Conclusion

For the foregoing reasons, the SDC move to quash MGC's discovery requests in full or, in the alternative, to limit the MGC's requests as set forth herein.

Dated: January 24, 2018

Respectfully submitted,

/s/ Michael Warley

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CERTIFICATE OF SERVICE

I, Michael A. Warley, hereby certify that a copy of the foregoing was sent electronically on January 24, 2018 to the following:

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/s/ Michael Warley

Michael A. Warley

Exhibit 1

Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.

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| <i>In re</i> |) | |
| Distribution of |) | |
| Cable Royalty Funds |) | Consolidated Docket No. |
| _____ |) | 14-CRB-0010-CD/SD |
| |) | (2010-2013) |
| <i>In re</i> |) | |
| Distribution of |) | |
| Satellite Royalty Funds |) | |
| _____ |) | |

**MULTIGROUP CLAIMANTS’ DOCUMENT REQUESTS
UPON SETTLING DEVOTIONAL CLAIMANTS**

A. Introduction and Definitions.

Pursuant to the Copyright Royalty Board Regulations, 37 C.F.R. Section 351.6, Multigroup Claimants (“MC”) hereby requests that the Settling Devotional Claimants (“SDC”) produce for inspection and copying documents related to the Written Direct Statements of Settling Devotional Claimants, filed on December 29, 2017, on or before January 15, 2018. These requests shall be deemed continuing to the final decision of the Copyright Royalty Board in these proceedings and supplementation of the SDC’s responses is hereby requested to the maximum extent of the rules of this tribunal.

For purposes of this request, the term “document” is defined as including writings, recordings, drawings, graphs, charts, photographs, phonorecords, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form. Any data or information utilized by respondent

and capable of electronic manipulation should be produced in electronic format. Writings and recordings, in particular, shall include, without limitation, all forms of electronic communication, including but not limited to electronic mail. A draft or non-identical copy is a separate document within the meaning of this term. Also, for purposes of these document requests, when we refer to (1) “Exhibit” we are referencing the SDC’s Exhibits to its Written Direct Statements, and (2) “SDC” we intend to include Settling Devotional Claimants and any SDC-represented claimant.

In addition, these requests are subject to the following definitions and instructions:

1. If no responsive documents exist, indicate “No responsive documents”.
2. If documents requested are not available in exactly the form requested, furnish carefully prepared estimates designated as such, or indicate that the documents cannot be obtained, and explain the reason that the documents cannot be obtained. When information is supplied pursuant to this instruction, explain why the information is being supplied in a form different from that requested.
3. If you do not produce any document or any information relating to any document, or if you withhold any document because of a claim of privilege, set forth the privilege claimed, the facts on which you rely to support the claimed privilege, and furnish a list identifying each document or thing for which privilege is claimed, together with the information as to each such document or thing required.
4. When a requested document has been destroyed, is alleged to have been destroyed, or exists but is no longer in your possession, custody, or control, state (a) its date of creation; (b) the name(s) and title(s) of its author(s), sender(s), and recipient(s) of the document; (c) the reason for

its destruction, disposition, or non-availability; (d) person(s) having knowledge of its destruction, disposition, or non-availability; and (e) the person(s) responsible for its destruction, disposition, or non-availability.

5. These requests are intended to reach all requested documents and things to the extent permissible under the Copyright Royalty Board regulations, and requests should be construed to be inclusive rather than exclusive.

6. When responding, identify each discovery request by number and letter and specifically identify the documents that are being provided that are responsive to the request.

B. MC requests the following documents:

Allocation Proceedings for 2010-2013 Cable or Satellite Royalties

1) All documents produced by any party to the 2010-2013 cable or satellite royalty allocation proceedings, including but not limited to the Motion Picture Association of America, Settling Devotional Claimants, Joint Sports Claimants, Canadian Claimants Group, Commercial Television Claimants Group, and the Public Television Claimants.

Written Direct Statement

2) Any and all documents reflecting agreements entered into between the SDC, on the one hand, and either John Sanders, Dr. Erken Erdem, Toby Berlin, Cable Data Corporation, Tribune Media Services, or Nielsen Media Research, on the other hand.

3) Any and all documents supporting the SDC's claim to the percentages of the 2010-2013 cable or satellite royalties set forth in the SDC Written Direct Statement.

4) Any and all documents reflecting differences between the SDC's written direct statement filed on June 30, 2017 and the version filed on December 29, 2017.

5) Any and all documents on which any differences between the SDC's written direct statement filed on June 30, 2017 and the version filed on December 29, 2017, are based.

Testimony of John Sanders

- 6) Any and all documents relied on by John Sanders in order to form the statements and opinions expressed in his testimony, including but not limited to documents that would tend to undermine, deny, dispute, limit, or qualify any of the statements and opinions expressed in his testimony.
- 7) Any and all of the documents identified by Mr. Sanders as “materials considered” during the preparation of his written testimony.
- 8) Any and all documents used to prepare any of the “materials considered” by Mr. Sanders, including but not limited to any information and data described at 37 C.F.R. Section 351.10(e).
- 9) Any and all documents reflecting methodological alternatives considered by Mr. Sanders.
- 10) Any testimony of John Fuller, James Trautman, Michael Egan, Judith Allen, or Gregory Rosston, that was considered by Mr. Sanders.
- 11) Any and all documents relating to the “series of teleconferences with executives from Nielsen”, including all correspondence and notes of such teleconferences.

Any and all documents underlying or used to support the following statements:

- 12) “A religious program with a larger audience is more likely to attract and retain more subscribers for the cable system operator, and is therefore of proportionately higher value.”
- 13) “... [C]able and satellite operators give consideration to specific programs on a local television channel in making a decision as to whether or not to carry it on a distant signal basis. . .”
- 14) “In its data reporting on viewing of religious television programming, Nielsen produced, until July of 2013, a quarterly report called Report on Devotional Programs (previously defined as “RODP”).”
- 15) “Nielsen imposes restrictions on the devotional programs and stations that are included in the quarterly RODPs.”
- 16) “There are certain programs in the devotional category which, while they may be quite popular and generate significant audience ratings, do not appear in the RODPs because they do not meet the reporting criteria. Examples might be Christmas and Easter specials, Spanish language programming, or monthly specials.”

- 17) “[I]n the absence of detailed distant signal viewing data, local viewing data from other markets is used predictively.”
- 18) “Extensive audience measurement data compiled and subjected to rigorous statistical standards by Nielsen is available and is routinely used as a predictor of a program’s performance in a distant market.”
- 19) “Of the 34 rated programs listed in Appendix C, only 20 appeared in every available RODP report.”
- 20) “In December of 2017, the SDC acquired the additional audience data from Nielsen which includes additional measurements not included in the original RODP reports”.
- 21) “As quantified in the testimony of Dr. Erdem, although the additional data is small relative to the wealth of data contained in the RODP reports, the SDC receives an even higher share of viewing in this additional data than it did in the original RODP reports.”
- 22) “As such, the additional data confirms the relationships in the RODP reports, and supports the conclusion that the RODP data should be a “floor” on the relative value of the SDC programs because, if one were to incorporate the additional information from the custom additional Nielsen data, it would only serve to boost the SDC represented programming’s relative fair market value.”

Related Documents

- 23) Any “Nielsen rating data” in the possession of the SDC.
- 24) Any “CDC distant viewing data” in the possession of the SDC.

Any and all documents underlying or used to create the following related documents, including but not limited to correspondence related thereto:

- 25) Appendix B.
- 26) Appendix C.
- 27) Figure 1.

Testimony of Erkan Erdem

- 28) Any and all documents relied on by Erkan Erdem in order to form the statements and opinions expressed in his testimony, including but not limited to documents that would tend to undermine, deny, dispute, limit, or qualify any of the statements and opinions expressed in his testimony.
- 29) Any and all of the documents identified by Mr. Erdem as “materials considered” during the preparation of his written testimony.
- 30) Any and all documents used to prepare any of the “materials considered” by Mr. Erdem, including but not limited to any information and data described at 37 C.F.R. Section 351.10(e).
- 31) Any and all documents reflecting methodological alternatives considered by Mr. Erdem.
- 32) Any testimony of John Fuller, James Trautman, Michael Egan, Judith Allen, or Gregory Rosston, that was considered by Mr. Erdem.
- 33) Any and all documents supporting the conclusions set forth in the “Conclusions” section of Mr. Erdem’s testimony.

Any and all documents underlying or used to support the following statements:

- 34) “I received detailed Microsoft Excel spreadsheets with lists of claimants and program titles claimed by both SDC and MGC. . . .”
- 35) “[N]ot all program titles claimed by SDC and MGC appear in the Nielsen Reports due to reportability requirements.”
- 36) “I (along with SDC’s other expert, John Sanders and counsel for SDC) initiated conversations with Nielsen regarding the possibility of obtaining additional devotional program viewing data.”
- 37) “In December, 2017, Nielsen provided a series of reports consisting of sweep month viewing of programming designated as “devotional” in terms of genre by television stations.”
- 38) “In addition, upon learning that certain programs claimed by SDC and MGC were alternatively designated by local stations as “unclassified” or some other genre, and thus

excluded from the “devotional” genre report,” Nielsen was provided with a list of SDC and MGC titles for additional reporting.”

39) “The Supplemental Nielsen Data are derived from the same databases as the ROPDs, namely data from sweep months in all 210 Designated Market Area (“DMA”) regions within the United States for 2010-2013.⁶ The Supplemental Nielsen Data includes a) program titles; b) station carrying (including sweep month, start and end time, and market); ratings, shares and impressions (household viewers); and market size.”

40) “Then, considering the appeal of the TV station, Operators utilize the copyright law’s compulsory licensing system to carry TV signals on their menu of TV stations for subscribers.”

41) “Subscribers’ decisions in return affect how Operators and TV stations act.”

42) “. . . the correct methodology for allocating royalties is the one that is based on actual viewing patterns.”

43) “[F]rom an Operator’s perspective, with rare exception, programs that are not scheduled on a regular basis are less likely to drive subscriptions than regularly scheduled programs (such as the ones captured by the Nielsen reports).”

44) “I obtained and reviewed these [CDC reports from cable and satellite Statements of Account] covering 2010-2013 for satellite and cable retransmissions.”

45) “It is my understanding that market participants generally value diary data over metered data”

46) “As . . . the Judges found, Shapley valuation predicts that ratings underestimate the value of the most highly viewed programs, when comparing programs geared toward similar audiences that have similar levels of overlap among viewers.”

47) “It is my understanding that reliable, national distant rating or viewership information from distant markets is not readily available from Nielsen for 2010-2013.”

48) “there is no reason to believe that ratings in the local market are significantly different from ratings in the distant markets, on average.”

49) “[I]n order to establish that there is a positive, statistically significant correlation between local and distant ratings (and rely on local ratings in the rest of my report), I performed an analysis using Nielsen distant viewing data (i.e., HHVH) from 1999-2003 that was available to me in prior proceedings.”

- 50) “In addition to reporting the correlation coefficient for the relationship between local and distant ratings, I conduct regression analyses relating distant ratings to local ratings.”
- 51) I conduct two sets of regression analyses using distant rating as the dependent variable.”
- 52) First, using 60 data points from claimed programs, I estimate three models. In model 1, I include only the local rating as the independent variable. In model 2, I include a trend variable for 1999-2003, in addition to the local rating. In model 3, I include year dummies, in addition to the local rating.
- 53) Second, I re-estimate the same three models using 104 data points from all programs (not only the ones claimed by SDC or IPG) over the same time period.
- 54) Given that these programs are relatively homogeneous, including observable (and objective) program-specific factors would not affect the results in a significant way. Also, because ratings are calculations over many stations, including station-specific factors is not feasible.
- 55) “This analysis indicates a strong positive relationship between local ratings and distant viewership calculated as a percentage of distant subscribers.”
- 56) “The correlation coefficient for the 60 data points from claimed programs during 1999-2003 is 0.79 and it is statistically significant.”
- 57) “In the two additional models where I test if the distant ratings change over time or by year, I find that the coefficients for the trending term and year dummies are not statistically significant.”
- 58) “That is, after controlling for local ratings, distant ratings appear to be consistent and stable over 1999-2003.”
- 59) “In the absence of any distant ratings data and given that Nielsen ratings include households with both cable and satellite service, Nielsen local ratings can be used as a reasonable proxy for cable and satellite ratings.”
- 60) “[N]ot all devotional programs are included in the Nielsen rankings due to the program and station reportability standards set by Nielsen or because they were not ranked due to Nielsen reporting standards.”
- 61) “To provide estimates of relative market value of retransmitted programs by SDC and MGC claimants, I rely on both Nielsen Reports on Devotional Programs for ratings and CDC SOAs for number of distant subscribers for 2010-2013.”

- 62) “If the average rating for a program is missing from the Nielsen Ratings data, then it can be calculated (or estimated) as the sum of number of households from the Nielsen Audience data divided by the number of households in the covered markets (known as “projected coverage” in Nielsen R-7).”
- 63) “To create a distant ratings measure and compare with local ratings, I combine Nielsen Audience data, Nielsen Ratings data, and CDC SOAs”
- 64) “Then, I keep only the records that merge and exclude the rest from my analysis.”
- 65) “Then, I aggregate the number of households (from Nielsen Audience data) and distant subscribers by year and program title by summing over the channels.”
- 66) “Finally, I merge this combined data with the Nielsen Ratings data by year and program title.”
- 67) “To impute the missing rating information (those with “LT”) for a few shows claimed by SDC and MGC, calculate the ratings information using the values provided in the Nielsen Ratings and Nielsen Audience data. Specifically, I estimate the rating by dividing the number of households by the projected coverage in Nielsen sweep markets.”
- 68) “[I] Calculate the total distant viewers for SDC and MGC programs in each year by multiplying the average ratings by the number of subscribers for channels the relevant SDC and MGC programs are broadcast on, and summing over all such programs.”
- 69) “[U]sing HHVH data that is available for 1999-2003, I estimate a regression model to characterize the relationship with distant viewership (i.e., HHVH) and observable market data, such as local ratings, number of distant subscribers, total number of stations (that carry a particular program), and controls for time trends.”
- 70) “I also estimated additional models that include total subscribers and number of stations that carry each program as other independent variables. The estimated coefficients for these variables were insignificant.”
- 71) “Based on the regression coefficient estimates, which quantify the marginal effect of each variable (e.g., number of distant subscribers) on distant viewership, I then predict distant viewership using market data for 2010-2013.”

Related Documents

- 72) The “Supplemental Nielsen Data”.

Any and all documents underlying or used to create the following related documents, including but not limited to correspondence related thereto:

- 73) The “Nielsen sweep reports . . . available for 2010-2013.”
- 74) Satellite Statements of Account reviewed by Cable Data Corporation for 2010-2013.
- 75) Exhibit 2.
- 76) Exhibit 3.
- 77) Exhibit 4.
- 78) Exhibit 5.
- 79) Exhibit 6.
- 80) Exhibit 7.
- 81) Exhibit 8.
- 82) Exhibit 9.
- 83) Exhibit 10.

Dated: January 8, 2018

_____/s/_____
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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of January, 2018, a copy of the foregoing was sent by electronic mail to the parties listed on the attached Service List.

_____/s/_____
Brian D. Boydston, Esq.

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Exhibit 2



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January 16, 2018

VIA EMAIL AND FEDEX

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Re: ***Docket No. 14-CRB-0010-CD/SD (2010-2013), Distribution of 2010-2013 Cable and Satellite Royalty Funds
Settling Devotional Claimants' Objections to Multigroup Claimants' Document Requests***

Dear Mr. Boydston,

The Settling Devotional Claimants ("SDC") hereby submit the following objections to the document requests submitted by Multigroup Claimants ("MGC") on January 8, 2018, in connection with the above-referenced proceedings. These objections are without prejudice to the SDC's right to move to quash these requests.

A. General Objections

1. The SDC object to all of MGC's requests on the grounds that he is not entitled to discovery because he is not a proper party in the 2010-2013 cable and satellite royalty fund distribution or allocation phase proceedings because MGC did not file a conforming written direct statement in either phase of the proceedings. *See* 37 C.F.R.351.4(a)-(b); 17 U.S.C. § 803(b)(6)(C)(i) and (ii)(II); *see also Order Granting In Part Allocation Phase Parties' Motion To Dismiss Multigroup Claimants And Denying Multigroup Claimants' Motion For Sanctions Against Allocation Phase Parties* at 4 (August 11, 1017). The SDC will not produce documents or respond substantively to these requests on the grounds of this objection.

2. The SDC object to MGC's requests to the extent that they seek the disclosure of information and documents outside the scope of discovery as defined by 37 C.F.R. § 351.6, which only permits discovery from "an opposing party" of "nonprivileged underlying documents related to the written exhibits and testimony." Because MGC has failed to file any written direct statement, he is not an "opposing party" within the meaning of the rules. The SDC will not produce documents or respond substantively to these requests on the grounds of this objection.

3. The SDC object to all of MGC's requests relating to the selection of a distribution methodology on the ground that MGC has expressly and tacitly accepted the SDC's proposed methodology, rendering discovery relating to its selection immaterial.

4. The SDC object to MGC's stated date for the production of documents of January 15, 2018, on the grounds that this date is not based on any regulation, statute, or order setting forth this deadline. MGC is not entitled to set a unilateral deadline for discovery responses. The SDC also object to this deadline as it falls on a federal holiday. To the extent the SDC are required to provide responsive documents to these requests, we will produce non-privileged documents only, on a mutually agreeable date.

5. The SDC object to MGC's requests to the extent that they seek the disclosure of information and documents protected from disclosure by any privilege, including, without limitation, the attorney-client privilege, common interest privilege, and the work product doctrine. Privileged documents will not be produced. Any inadvertent production of privileged documents is not intended to constitute a waiver of the privilege.

6. The SDC object to MGC's requests to the extent that they seek production of documents to which MGC and the SDC have equal access, including but not limited to documents provided by MGC to the SDC,

publicly available articles, Federal Register notices, filings with the Copyright Office, and Copyright Royalty Board, Copyright Royalty Tribunal, and CARP decisions and proceedings.

7. The SDC object to MGC's requests to the extent they call for a witness to create documents or to produce a document not currently in the witness's possession or control.

9. These General Objections are incorporated into each of the following Responses.

B. Specific Objections

Allocation Proceedings for 2010-2013 Cable or Satellite Royalties

1) All documents produced by any party to the 2010-2013 cable or satellite royalty allocation proceedings, including but not limited to the Motion Picture Association of America, Settling Devotional Claimants, Joint Sports Claimants, Canadian Claimants Group, Commercial Television Claimants Group, and the Public Television Claimants.

The SDC will not produce documents in response to this request, pursuant to their General Objections. The SDC further object to this request on the grounds that MGC did not submit a written direct statement in the Allocation Phase of these proceedings and is therefore not an Allocation Phase party entitled to discovery exchanged in the Allocation Phase. The SDC incorporate into this objection the arguments made in the Allocation Phase Parties' Motion to Dismiss Multigroup Claimants, filed Jan. 25, 2017. The SDC further object to this request on the grounds that it is overbroad and seeks information that is irrelevant to the Distribution Phase of these proceedings, and that it does not seek documents within the scope of discovery in the Distribution Phase under 37 C.F.R. § 351.6, because it seeks documents not underlying or otherwise related to the SDC's written direct statement in the Distribution Phase. The SDC further note that counsel for the Commercial Television Claimants (CTV), Joint Sports Claimants (JSC), Public Television Claimants (PTV), and Canadian Claimant Group (CCG) parties have objected to the SDC producing their discovery documents to MGC.

Written Direct Statement

2) Any and all documents reflecting agreements entered into between the SDC, on the one hand, and either John Sanders, Dr. Erken Erdem, Toby Berlin, Cable Data Corporation, Tribune Media Services, or Nielsen Media Research, on the other hand.

The SDC will not produce documents in response to this request, pursuant to their General Objections. The SDC further object to this request to the extent this request calls for agreements relating to any proceeding other than these proceedings on the ground that a request for any other agreements would be overbroad and irrelevant. The SDC further object to production of portions of agreements containing

privileged information or work product information or confidential business information that is not relevant to the substance of the case.

3) *Any and all documents supporting the SDC's claim to the percentages of the 2010-2013 cable or satellite royalties set forth in the SDC Written Direct Statement.*

The SDC will not produce documents in response to this request, pursuant to their General Objections.

4) *Any and all documents reflecting differences between the SDC's written direct statement filed on June 30, 2017 and the version filed on December 29, 2017.*

The SDC will not produce documents in response to this request, pursuant to their General Objections. The SDC further object to this request on the grounds that MGC is not entitled to discovery regarding documents filed on June 30, 2017, which were deemed withdrawn by the Judges' August 11, 2017 Order. The SDC further object on the grounds that any such documents are work product or attorney-client privileged. The SDC further object to the extent this request seeks to compel the creation of new documents.

5) *Any and all documents on which any differences between the SDC's written direct statement filed on June 30, 2017 and the version filed on December 29, 2017, are based.*

The SDC will not produce documents in response to this request, pursuant to their General Objections. The SDC further object to this request on the grounds that MGC is not entitled to discovery regarding documents filed on June 30, 2017, which were deemed withdrawn by the Judges' August 11, 2017 Order. The SDC further object on the grounds that any such documents are work product or attorney-client privileged. The SDC further object to the extent this request seeks to compel the creation of new documents.

Testimony of John Sanders

6) *Any and all documents relied on by John Sanders in order to form the statements and opinions expressed in his testimony, including but not limited to documents that would tend to undermine, deny, dispute, limit, or qualify any of the statements and opinions expressed in his testimony.*

The SDC will not produce documents in response to this request, pursuant to their General Objections. The SDC further object to this request on the ground that it is vague and overbroad, in that it does not address the SDC to any identifiable topic or set of documents. The SDC further object to this request on the ground that MGC has expressly and tacitly accepted the SDC's proposed methodology, rendering discovery relating to its selection immaterial.

7) *Any and all of the documents identified by Mr. Sanders as "materials considered" during the preparation of his written testimony.*

The SDC will not produce documents in response to this request, pursuant to their General Objections. The SDC further object to this request on the ground that

MGC has expressly and tacitly accepted the SDC's proposed methodology, rendering discovery relating to its selection immaterial.

8) *Any and all documents used to prepare any of the "materials considered" by Mr. Sanders, including but not limited to any information and data described at 37 C.F.R. Section 351.10(e).*

The SDC will not produce documents in response to this request, pursuant to their General Objections. The SDC further object to this request on the ground that MGC has expressly and tacitly accepted the SDC's proposed methodology, rendering discovery relating to its selection immaterial.

9) *Any and all documents reflecting methodological alternatives considered by Mr. Sanders.*

The SDC will not produce documents in response to this request, pursuant to their General Objections. The SDC further object to this request on the ground that MGC has expressly and tacitly accepted the SDC's proposed methodology, rendering discovery relating to its selection immaterial.

10) *Any testimony of John Fuller, James Trautman, Michael Egan, Judith Allen, or Gregory Rosston, that was considered by Mr. Sanders.*

The SDC will not produce documents in response to this request, pursuant to their General Objections. The SDC further object to this request on the ground that MGC has expressly and tacitly accepted the SDC's proposed methodology, rendering discovery relating to its selection immaterial.

11) *Any and all documents relating to the "series of teleconferences with executives from Nielsen", including all correspondence and notes of such teleconferences.*

The SDC will not produce documents in response to this request, pursuant to their General Objections. The SDC further object on the grounds that any such documents are work product or attorney-client privileged. The SDC further object to this request on the ground that MGC has expressly and tacitly accepted the SDC's proposed methodology, rendering discovery relating to its selection immaterial.

Any and all documents underlying or used to support the following statements:

12) *"A religious program with a larger audience is more likely to attract and retain more subscribers for the cable system operator, and is therefore of proportionately higher value."*

The SDC will not produce documents in response to this request, pursuant to their General Objections. The SDC further object to this request on the ground that MGC has expressly and tacitly accepted the SDC's proposed methodology, rendering discovery relating to its selection immaterial.

13) *"... [C]able and satellite operators give consideration to specific programs on a local television channel in making a decision as to whether or not to carry it on a distant signal basis..."*

The SDC will not produce documents in response to this request, pursuant to their General Objections. The SDC further object to this request on the ground that MGC has expressly and tacitly accepted the SDC's proposed methodology, rendering discovery relating to its selection immaterial.

14) *"In its data reporting on viewing of religious television programming, Nielsen produced, until July of 2013, a quarterly report called Report on Devotional Programs (previously defined as "RODP")."*

The SDC will not produce documents in response to this request, pursuant to their General Objections. The SDC further object to this request on the ground that MGC has expressly and tacitly accepted the SDC's proposed methodology, rendering discovery relating to its selection immaterial.

15) *"Nielsen imposes restrictions on the devotional programs and stations that are included in the quarterly RODPs."*

The SDC will not produce documents in response to this request, pursuant to their General Objections. The SDC further object to this request on the ground that MGC has expressly and tacitly accepted the SDC's proposed methodology, rendering discovery relating to its selection immaterial.

16) *"There are certain programs in the devotional category which, while they may be quite popular and generate significant audience ratings, do not appear in the RODPs because they do not meet the reporting criteria. Examples might be Christmas and Easter specials, Spanish language programming, or monthly specials."*

The SDC will not produce documents in response to this request, pursuant to their General Objections. The SDC further object to this request on the ground that MGC has expressly and tacitly accepted the SDC's proposed methodology, rendering discovery relating to its selection immaterial.

17) *"[I]n the absence of detailed distant signal viewing data, local viewing data from other markets is used predictively."*

The SDC will not produce documents in response to this request, pursuant to their General Objections. The SDC further object to this request on the ground that MGC has expressly and tacitly accepted the SDC's proposed methodology, rendering discovery relating to its selection immaterial.

18) *"Extensive audience measurement data compiled and subjected to rigorous statistical standards by Nielsen is available and is routinely used as a predictor of a program's performance in a distant market."*

The SDC will not produce documents in response to this request, pursuant to their General Objections. The SDC further object to this request on the ground that MGC has expressly and tacitly accepted the SDC's proposed methodology, rendering discovery relating to its selection immaterial.

19) *"Of the 34 rated programs listed in Appendix C, only 20 appeared in every available RODP report."*

The SDC will not produce documents in response to this request, pursuant to their General Objections. The SDC further object to this request on the ground that MGC

has expressly and tacitly accepted the SDC's proposed methodology, rendering discovery relating to its selection immaterial.

20) *"In December of 2017, the SDC acquired the additional audience data from Nielsen which includes additional measurements not included in the original RODP reports".*

The SDC will not produce documents in response to this request, pursuant to their General Objections. The SDC further object to this request to the extent it seeks documents protected as work product or by attorney-client privilege.

21) *"As quantified in the testimony of Dr. Erdem, although the additional data is small relative to the wealth of data contained in the RODP reports, the SDC receives an even higher share of viewing in this additional data than it did in the original RODP reports."*

The SDC will not produce documents in response to this request, pursuant to their General Objections.

22) *"As such, the additional data confirms the relationships in the RODP reports, and supports the conclusion that the RODP data should be a "floor" on the relative value of the SDC programs because, if one were to incorporate the additional information from the custom additional Nielsen data, it would only serve to boost the SDC represented programming's relative fair market value."*

The SDC will not produce documents in response to this request, pursuant to their General Objections.

Related Documents

23) *Any "Nielsen rating data" in the possession of the SDC.*

The SDC will not produce documents in response to this request, pursuant to their General Objections. The SDC further object to this request on the grounds that it is overbroad and outside the scope of discovery in seeking "any" Nielsen data in the possession of the SDC, and the SDC will not produce Nielsen data that does not underlie their written direct testimony.

24) *Any "CDC distant viewing data" in the possession of the SDC.*

The SDC will not produce documents in response to this request, pursuant to their General Objections. The SDC further object to this request on the grounds that it is overbroad and outside the scope of discovery in seeking "any" CDC data in the possession of the SDC, and the SDC will not produce CDC data that does not underlie their written direct testimony.

Any and all documents underlying or used to create the following related documents, including but not limited to correspondence related thereto:

The SDC object to this category of requests to the extent they seek documents or correspondence subject to the work product protection or attorney-client privilege.

25) *Appendix B.*

The SDC will not produce documents in response to this request, pursuant to their General Objections.

26) *Appendix C.*

The SDC will not produce documents in response to this request, pursuant to their General Objections.

27) *Figure 1.*

The SDC will not produce documents in response to this request, pursuant to their General Objections.

Testimony of Erkan Erdem

28) *Any and all documents relied on by Erkan Erdem in order to form the statements and opinions expressed in his testimony, including but not limited to documents that would tend to undermine, deny, dispute, limit, or qualify any of the statements and opinions expressed in his testimony.*

The SDC will not produce documents in response to this request, pursuant to their General Objections. The SDC further object to this request on the ground that it is vague and overbroad, in that it does not address the SDC to any identifiable topic or set of documents.

29) *Any and all of the documents identified by Mr. Erdem as “materials considered” during the preparation of his written testimony.*

The SDC will not produce documents in response to this request, pursuant to their General Objections.

30) *Any and all documents used to prepare any of the “materials considered” by Mr. Erdem, including but not limited to any information and data described at 37 C.F.R. Section 351.10(e).*

The SDC will not produce documents in response to this request, pursuant to their General Objections.

31) *Any and all documents reflecting methodological alternatives considered by Mr. Erdem.*

The SDC will not produce documents in response to this request, pursuant to their General Objections. The SDC further object to this request on the ground that MGC has expressly and tacitly accepted the SDC’s proposed methodology, rendering discovery relating to its selection immaterial.

32) *Any testimony of John Fuller, James Trautman, Michael Egan, Judith Allen, or Gregory Rosston, that was considered by Mr. Erdem.*

The SDC will not produce documents in response to this request, pursuant to their General Objections. The SDC further object to this request on the ground that MGC has expressly and tacitly accepted the SDC’s proposed methodology, rendering discovery relating to its selection immaterial.

33) *Any and all documents supporting the conclusions set forth in the “Conclusions” section of Mr. Erdem’s testimony.*

The SDC will not produce documents in response to this request, pursuant to their General Objections. The SDC further object to this request on the ground that MGC has expressly and tacitly accepted the SDC’s proposed methodology, rendering discovery relating to its selection immaterial.

Any and all documents underlying or used to support the following statements:

34) *“I received detailed Microsoft Excel spreadsheets with lists of claimants and program titles claimed by both SDC and MGC. . . .”*

The SDC will not produce documents in response to this request, pursuant to their General Objections. The SDC further object to this request to the extent it seeks documents protected as work product or by attorney-client privilege.

35) *“[N]ot all program titles claimed by SDC and MGC appear in the Nielsen Reports due to reportability requirements.”*

The SDC will not produce documents in response to this request, pursuant to their General Objections.

36) *“I (along with SDC’s other expert, John Sanders and counsel for SDC) initiated conversations with Nielsen regarding the possibility of obtaining additional devotional program viewing data.”*

The SDC will not produce documents in response to this request, pursuant to their General Objections. The SDC further object to this request to the extent it seeks documents protected as work product or by attorney-client privilege. The SDC further object to this request on the ground that MGC has expressly and tacitly accepted the SDC’s proposed methodology, rendering discovery relating to its selection immaterial.

37) *“In December, 2017, Nielsen provided a series of reports consisting of sweep month viewing of programming designated as “devotional” in terms of genre by television stations.”*

The SDC will not produce documents in response to this request, pursuant to their General Objections.

38) *“In addition, upon learning that certain programs claimed by SDC and MGC were alternatively designated by local stations as “unclassified” or some other genre, and thus excluded from the “devotional” genre report,” Nielsen was provided with a list of SDC and MGC titles for additional reporting.”*

The SDC will not produce documents in response to this request, pursuant to their General Objections. The SDC further object to this request to the extent it seeks documents protected as work product or by attorney-client privilege.

39) *“The Supplemental Nielsen Data are derived from the same databases as the ROPDs, namely data from sweep months in all 210 Designated Market Area*

(“DMA”) regions within the United States for 2010-2013.6 The Supplemental Nielsen Data includes a) program titles; b) station carrying (including sweep month, start and end time, and market); ratings, shares and impressions (household viewers); and market size.”

The SDC will not produce documents in response to this request, pursuant to their General Objections.

40) *“Then, considering the appeal of the TV station, Operators utilize the copyright law’s compulsory licensing system to carry TV signals on their menu of TV stations for subscribers.”*

The SDC will not produce documents in response to this request, pursuant to their General Objections. The SDC further object to this request on the ground that MGC has expressly and tacitly accepted the SDC’s proposed methodology, rendering discovery relating to its selection immaterial.

41) *“Subscribers’ decisions in return affect how Operators and TV stations act.”*

The SDC will not produce documents in response to this request, pursuant to their General Objections. The SDC further object to this request on the ground that MGC has expressly and tacitly accepted the SDC’s proposed methodology, rendering discovery relating to its selection immaterial.

42) *“... the correct methodology for allocating royalties is the one that is based on actual viewing patterns.”*

The SDC will not produce documents in response to this request, pursuant to their General Objections. The SDC further object to this request on the ground that MGC has expressly and tacitly accepted the SDC’s proposed methodology, rendering discovery relating to its selection immaterial.

43) *“[F]rom an Operator’s perspective, with rare exception, programs that are not scheduled on a regular basis are less likely to drive subscriptions than regularly scheduled programs (such as the ones captured by the Nielsen reports).”*

The SDC will not produce documents in response to this request, pursuant to their General Objections. The SDC further object to this request on the ground that MGC has expressly and tacitly accepted the SDC’s proposed methodology, rendering discovery relating to its selection immaterial.

44) *“I obtained and reviewed these [CDC reports from cable and satellite Statements of Account] covering 2010-2013 for satellite and cable retransmissions.”*

The SDC will not produce documents in response to this request, pursuant to their General Objections.

45) *“It is my understanding that market participants generally value diary data over metered data”*

The SDC will not produce documents in response to this request, pursuant to their General Objections. The SDC further object to this request on the ground that MGC has expressly and tacitly accepted the SDC’s proposed methodology, rendering discovery relating to its selection immaterial.

46) *“As . . . the Judges found, Shapley valuation predicts that ratings underestimate the value of the most highly viewed programs, when comparing programs geared toward similar audiences that have similar levels of overlap among viewers.”*

The SDC will not produce documents in response to this request, pursuant to their General Objections.

47) *“It is my understanding that reliable, national distant rating or viewership information from distant markets is not readily available from Nielsen for 2010-2013.”*

The SDC will not produce documents in response to this request, pursuant to their General Objections. The SDC further object to this request on the ground that MGC has expressly and tacitly accepted the SDC’s proposed methodology, rendering discovery relating to its selection immaterial.

48) *“there is no reason to believe that ratings in the local market are significantly different from ratings in the distant markets, on average.”*

The SDC will not produce documents in response to this request, pursuant to their General Objections. The SDC further object to this request on the ground that MGC has expressly and tacitly accepted the SDC’s proposed methodology, rendering discovery relating to its selection immaterial.

49) *“[I]n order to establish that there is a positive, statistically significant correlation between local and distant ratings (and rely on local ratings in the rest of my report), I performed an analysis using Nielsen distant viewing data (i.e., HHVH) from 1999-2003 that was available to me in prior proceedings.”*

The SDC will not produce documents in response to this request, pursuant to their General Objections.

50) *“In addition to reporting the correlation coefficient for the relationship between local and distant ratings, I conduct regression analyses relating distant ratings to local ratings.”*

The SDC will not produce documents in response to this request, pursuant to their General Objections.

51) *I conduct two sets of regression analyses using distant rating as the dependent variable.”*

The SDC will not produce documents in response to this request, pursuant to their General Objections.

52) *First, using 60 data points from claimed programs, I estimate three models. In model 1, I include only the local rating as the independent variable. In model 2, I include a trend variable for 1999-2003, in addition to the local rating. In model 3, I include year dummies, in addition to the local rating.*

The SDC will not produce documents in response to this request, pursuant to their General Objections.

53) *Second, I re-estimate the same three models using 104 data points from all programs (not only the ones claimed by SDC or IPG) over the same time period.*

The SDC will not produce documents in response to this request, pursuant to their General Objections.

54) *Given that these programs are relatively homogeneous, including observable (and objective) program-specific factors would not affect the results in a significant way. Also, because ratings are calculations over many stations, including station-specific factors is not feasible.*

The SDC will not produce documents in response to this request, pursuant to their General Objections.

55) *“This analysis indicates a strong positive relationship between local ratings and distant viewership calculated as a percentage of distant subscribers.”*

The SDC will not produce documents in response to this request, pursuant to their General Objections.

56) *“The correlation coefficient for the 60 data points from claimed programs during 1999- 2003 is 0.79 and it is statistically significant.”*

The SDC will not produce documents in response to this request, pursuant to their General Objections.

57) *“In the two additional models where I test if the distant ratings change over time or by year, I find that the coefficients for the trending term and year dummies are not statistically significant.”*

The SDC will not produce documents in response to this request, pursuant to their General Objections.

58) *“That is, after controlling for local ratings, distant ratings appear to be consistent and stable over 1999-2003.”*

The SDC will not produce documents in response to this request, pursuant to their General Objections.

59) *“In the absence of any distant ratings data and given that Nielsen ratings include households with both cable and satellite service, Nielsen local ratings can be used as a reasonable proxy for cable and satellite ratings.”*

The SDC will not produce documents in response to this request, pursuant to their General Objections. The SDC further object to this request on the ground that MGC has expressly and tacitly accepted the SDC’s proposed methodology, rendering discovery relating to its selection immaterial.

60) *“[N]ot all devotional programs are included in the Nielsen rankings due to the program and station reportability standards set by Nielsen or because they were not ranked due to Nielsen reporting standards.”*

The SDC will not produce documents in response to this request, pursuant to their General Objections.

61) *“To provide estimates of relative market value of retransmitted programs by SDC and MGC claimants, I rely on both Nielsen Reports on Devotional Programs for ratings and CDC SOAs for number of distant subscribers for 2010-2013.”*

The SDC will not produce documents in response to this request, pursuant to their General Objections. The SDC further object to this request on the ground that MGC has expressly and tacitly accepted the SDC’s proposed methodology, rendering discovery relating to its selection immaterial.

62) *“If the average rating for a program is missing from the Nielsen Ratings data, then it can be calculated (or estimated) as the sum of number of households from the Nielsen Audience data divided by the number of households in the covered markets (known as “projected coverage” in Nielsen R-7).”*

The SDC will not produce documents in response to this request, pursuant to their General Objections. The SDC further object to this request on the ground that MGC has expressly and tacitly accepted the SDC’s proposed methodology, rendering discovery relating to its selection immaterial.

63) *“To create a distant ratings measure and compare with local ratings, I combine Nielsen Audience data, Nielsen Ratings data, and CDC SOAs”*

The SDC will not produce documents in response to this request, pursuant to their General Objections. The SDC further object to this request on the ground that MGC has expressly and tacitly accepted the SDC’s proposed methodology, rendering discovery relating to its selection immaterial.

64) *“Then, I keep only the records that merge and exclude the rest from my analysis.”*

The SDC will not produce documents in response to this request, pursuant to their General Objections. The SDC further object to this request on the ground that MGC has expressly and tacitly accepted the SDC’s proposed methodology, rendering discovery relating to its selection immaterial.

65) *“Then, I aggregate the number of households (from Nielsen Audience data) and distant subscribers by year and program title by summing over the channels.”*

The SDC will not produce documents in response to this request, pursuant to their General Objections. The SDC further object to this request on the ground that MGC has expressly and tacitly accepted the SDC’s proposed methodology, rendering discovery relating to its selection immaterial.

66) *“Finally, I merge this combined data with the Nielsen Ratings data by year and program title.”*

The SDC will not produce documents in response to this request, pursuant to their General Objections. The SDC further object to this request on the ground that MGC has expressly and tacitly accepted the SDC’s proposed methodology, rendering discovery relating to its selection immaterial.

67) *“To impute the missing rating information (those with “LT”) for a few shows claimed by SDC and MGC, calculate the ratings information using the values*

provided in the Nielsen Ratings and Nielsen Audience data. Specifically, I estimate the rating by dividing the number of households by the projected coverage in Nielsen sweep markets.”

The SDC will not produce documents in response to this request, pursuant to their General Objections. The SDC further object to this request on the ground that MGC has expressly and tacitly accepted the SDC’s proposed methodology, rendering discovery relating to its selection immaterial.

68) “[I] Calculate the total distant viewers for SDC and MGC programs in each year by multiplying the average ratings by the number of subscribers for channels the relevant SDC and MGC programs are broadcast on, and summing over all such programs.”

The SDC will not produce documents in response to this request, pursuant to their General Objections. The SDC further object to this request on the ground that MGC has expressly and tacitly accepted the SDC’s proposed methodology, rendering discovery relating to its selection immaterial.

69) “[U]sing HHVH data that is available for 1999-2003, I estimate a regression model to characterize the relationship with distant viewership (i.e., HHVH) and observable market data, such as local ratings, number of distant subscribers, total number of stations (that carry a particular program), and controls for time trends.”

The SDC will not produce documents in response to this request, pursuant to their General Objections. The SDC further object to this request on the ground that MGC has expressly and tacitly accepted the SDC’s proposed methodology, rendering discovery relating to its selection immaterial.

70) “I also estimated additional models that include total subscribers and number of stations that carry each program as other independent variables. The estimated coefficients for these variables were insignificant.”

The SDC will not produce documents in response to this request, pursuant to their General Objections. The SDC further object to this request on the ground that MGC has expressly and tacitly accepted the SDC’s proposed methodology, rendering discovery relating to its selection immaterial.

71) “Based on the regression coefficient estimates, which quantify the marginal effect of each variable (e.g., number of distant subscribers) on distant viewership, I then predict distant viewership using market data for 2010-2013.”

The SDC will not produce documents in response to this request, pursuant to their General Objections. The SDC further object to this request on the ground that MGC has expressly and tacitly accepted the SDC’s proposed methodology, rendering discovery relating to its selection immaterial.

Related Documents

72) *The “Supplemental Nielsen Data”.*

The SDC will not produce documents in response to this request, pursuant to their General Objections.

Any and all documents underlying or used to create the following related documents, including but not limited to correspondence related thereto:

The SDC object to this category of requests to the extent they seek documents or correspondence subject to the work product protection or attorney-client privilege.

73) *The “Nielsen sweep reports . . . available for 2010-2013.”*

The SDC will not produce documents in response to this request, pursuant to their General Objections.

74) *Satellite Statements of Account reviewed by Cable Data Corporation for 2010-2013.*

The SDC will not produce documents in response to this request, pursuant to their General Objections.

75) *Exhibit 2.*

The SDC will not produce documents in response to this request, pursuant to their General Objections.

76) *Exhibit 3.*

The SDC will not produce documents in response to this request, pursuant to their General Objections.

77) *Exhibit 4.*

The SDC will not produce documents in response to this request, pursuant to their General Objections.

78) *Exhibit 5.*

The SDC will not produce documents in response to this request, pursuant to their General Objections.

79) *Exhibit 6.*

The SDC will not produce documents in response to this request, pursuant to their General Objections.

80) *Exhibit 7.*

The SDC will not produce documents in response to this request, pursuant to their General Objections.

81) *Exhibit 8.*

The SDC will not produce documents in response to this request, pursuant to their General Objections.

82) *Exhibit 9.*

The SDC will not produce documents in response to this request, pursuant to their General Objections.

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83) *Exhibit 10.*

The SDC will not produce documents in response to this request, pursuant to their General Objections.

Sincerely,

/s/ Matthew J. MacLean

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I, Michael A. Warley, hereby certify that a copy of the foregoing was sent electronically on January 16, 2018 to the following:

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/s/ Michael A Warley
Michael A. Warley

Certificate of Service

I hereby certify that on Wednesday, January 24, 2018 I provided a true and correct copy of the Settling Devotional Claimants' Motion to Quash Discovery Requests of Multigroup Claimants to the following:

MPAA-Represented Program Suppliers (MPAA), represented by Gregory O Olaniran served via Electronic Service at goo@msk.com

SESAC, Inc., represented by Christos P Badavas served via Electronic Service at cbadavas@sesac.com

Spanish Language Producers, represented by Brian D Boydston served via Electronic Service at brianb@ix.netcom.com

American Society of Composers, Authors and Publishers (ASCAP), represented by Sam Mosenkis served via Electronic Service at smosenkis@ascap.com

Public Broadcasting Service (PBS) and Public Television Claimants (PTC), represented by Lindsey L. Tonsager served via Electronic Service at ltonsager@cov.com

Multigroup Claimants (MGC), represented by Brian D Boydston served via Electronic Service at brianb@ix.netcom.com

Broadcast Music, Inc. (BMI), represented by Janet Fries served via Electronic Service at janet.fries@dbr.com

National Public Radio (NPR), represented by Gregory A Lewis served via Electronic Service at glewis@npr.org

Major League Soccer, LLC, represented by Edward S. Hammerman served via Electronic Service at ted@copyrightroyalties.com

Broadcaster Claimants Group (BCG) aka NAB aka CTV, represented by Ann Mace served via Electronic Service at amace@crowell.com

Canadian Claimants Group, represented by Lawrence K Satterfield served via Electronic Service at lksatterfield@satterfield-pllc.com

Joint Sports Claimants (JSC), represented by Philip R Hochberg served via Electronic Service at phochberg@srgpe.com

Signed: /s/ Michael A Warley